BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Tender Enquiry No: BESCOM/2024-25/SE0225 dated 27.11.2024

SECTION – III

GENERAL TERMS AND CONDITIONS OF CONTRACT

(GCC)

Providing Communication Solution and Technology for SCADA operations of SPB remote devices pertaining to South zone of BMAZ

Issued By

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ABBREVIATIONS:

BESCOM: Bangalore Electricity Supply Company Limited

BMAZ: Bangalore Metropolitan Area Zone

DAS: Distribution Automation System

SCADA: Supervisory Control and Data Acquisition

SPB: Single Panel Breaker

ITB: Instruction To Bidders

IFB: Invitation For Bidders

GCC: General terms and Conditions of Contract

TS: Technical Specification

LOI: Letter Of Intent

PBG: Performance Bank Guarantee

SLA: Service Level Agreement

DWA: Detailed Work Award

LRC: Line Reclosure

LBS: Load Break Switch

RMU: Ring Main Unit

RTU: Remote Terminal Unit

MPLS: Multiprotocol Level Switching

M2M: Machine to Machine

NMS: Network Management System

FAT: Factory Acceptance Testing

SAT: Site Acceptance Testing

SECTION-III

GENERAL TERMS & CONDITIONS OF CONTRACT

A. INTRODUCTION

1. DEFINITION OF TERMS

1.1. 'Contract' means the agreement entered into between the Owner and the Contractor as per the Contract Agreement signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.2. 'Owner or Employer' shall mean Bangalore Electricity Supply Company, Limited (BESCOM) and shall include its legal representatives, successors and assigns.

1.3. 'Contractor', shall mean the Bidder whose bid will be accepted by the Owner for the award of the Works and shall include such Contractor's legal representatives, successors and permitted assigns.

1.4. 'Bidder' shall mean an individual bidder participating in the tender, who may be a registered sole proprietorship firm, a partnership firm or a company registered under companies' act.

1.5. "The Goods" means all the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract;

1.6. "Services" means services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training and other obligations of the Supplier covered under the Contract;

1.7. "GCC" means the General Conditions of Contract contained in this section.

1.8. "The Purchaser" means the organization purchasing the Goods, i.e., BESCOM

1.9. "The Supplier" means the individual or firm supplying the Goods and Services under this Contract.

1.10. "The Government" means the Government of Karnataka State.

1.11. "The Project Site", where applicable, means the place or places named in TS.

1.12. 'Engineer' shall mean the officer appointed by the Owner to act as Engineer from time to time for the purpose of the Contract.

1.13. 'Consulting Engineer'/ 'Consultant' shall mean any firm or person duly appointed as such from time to time by the Owner.

1.14. The terms 'Equipment', 'Stores' and 'Materials' shall mean and include equipment, stores and materials to be provided by the Contractor under the Contract.

1.15. 'Works' shall mean and include supplying of Equipment/Material in the Scope of the Contractor and extending all Services, as per the Specifications and Complete Erection and Putting into Satisfactory Operation including all Transportation, Handling, Unloading and Storage at the Site and all other activities to be carried out by the Contractor as per the detailed scope of the work.

1.16. 'Specifications' shall mean the Specifications and Bidding Document forming a part of the Contract and such other schedules and drawings as may be mutually agreed upon.

1.17. The term 'Contract price' shall mean the percentage on Amount put to tender quoted by the Contractor in his bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire scope of the works.

1.18. 'Inspector' shall mean the Owner or any person nominated by the Owner from time to time, to inspect the equipment, stores or Works under the Contract and/or the duly authorized representative of the Owner.

1.19. The term 'Equipment/material Portion' of the Contract price shall mean the total value of the equipment including all applicable taxes and duties, F&I, Insurance etc.

1.20. The term 'Erection Portion' of the Contract price shall mean the value of field activities of the works including erection and putting into satisfactory operation including successful completion of performance and guarantee tests to be performed at Site by the Contractor including cost of insurances.

1.21. 'Manufacturer's Works' or 'Contractor's Works', shall mean the place of work used by the Contractor for the performance of the Contract.

1.22. 'Notice of Award of Contract'/ 'Letter of Award' / 'Letter of Intent' shall mean the official notice issued by the Owner notifying the Contractor that his bid has been accepted.

1.23. 'Date of Contract' shall mean the date on which Notice of Award of Contract/Letter of Award has been issued.

1.24. 'Month' shall mean the calendar month. 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each. A 'Week' shall mean continuous period of seven (7) days.

1.25. 'Writing' shall include any manuscript, type written or printed statement, with signature and/or seal as the case may be.

1.26. When the words 'Approved', 'Subject to Approval', 'Satisfactory', 'Equal to', 'Proper', 'Requested', 'As Directed', 'Where Directed', 'When Directed', 'Determined by', 'Accepted', 'Permitted', or words and phrases of like importance are used, the approval, judgment, direction etc. is understood to be a function of the Owner/Engineer.

1.27. 'Test on completion' shall mean such tests as prescribed in the Contract to be performed by the Contractor before the work is taken by the Owner/ before materials are accepted by the Owner.

1.28. 'Performance and Guarantee Tests', 'Functional Guarantee' shall mean all operational checks and tests required to determine and demonstrate capacity, efficiency, and operating characteristics as specified in the Contract Documents.

1.29. The term 'Taking Over' shall mean the Owner's written acceptance of the Works performed under the Contract, after successful completion of contract i.e. after Availability test as specified in the accompanying Technical Specifications or otherwise agreed in the Contract.

1.30. 'Guarantee Period' shall mean the period during which the Contractor shall remain liable for repair, replacement of any defective parts / failures of the works performed under the contract, along with

monitoring and ensuring healthy operation of the communication system.

1.31. 'Warranty Period' shall mean the period during which the Contractor shall remain liable for repair, replacement and ensuring healthy operation of the works performed under the Contract.

1.32. 'Engineer in charge of work' shall mean Assistant Engineer of the respective tower.

1.33. 'Latent Defects' shall mean such defects caused by faulty design, material or workmanship which cannot be detected during inspection, testing etc., based on the technology available for carrying out such tests.

1.34. 'Drawings', shall mean all:

(a) Drawings furnished by the Owner as a basis of Bid/Proposals.
(b) Supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the Contract.
(c) Drawings submitted by the Contractor with his bid provided such drawings are acceptable to the Owner.
(d) Plans submitted by the Contractor for executing the works with his bid provided such plans are acceptable to the Owner.
(e) Engineering data and drawings submitted by the Contractor as per designs during the progress of the work provided such drawings are acceptable to the Engineer/Owner.

1.35. 'Codes' shall mean the following, but not limited to, including the latest Amendments, and/or Replacements if any:

(a) Indian Electricity Act, 2003 for further codes and Rules and Regulations made there under.
(b) Indian Factory Act,1948 and Rules and Regulations made thereunder.
(c) Indian Factory Act, 1884, and Rules and Regulations made thereunder.
(d) American Society of Materials Testing Codes.
(e) Standards of the Indian Standards Institution.
(f) Other Internationally Approved Standards and/or Rules and Regulations touching the subject Matter of the Contract.

1.36. Words imparting the singular only shall also include the plural and vice – versa where the context so requires.

1.37. Words imparting 'Person' shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.

1.38. 'Bidding Documents', 'Bid Documents' means Information & Instructions, General Conditions of Contract and other Annexures included in Sections IFB, ITB, GCC, TS, Annexures.

1.39. In addition to the above the following definitions shall also apply

a) 'All equipment and materials' to be supplied shall also mean 'Goods'.
b) 'Constructed' shall also mean 'erected and installed'.
c) 'Contract Performance Guarantee' shall also mean 'Contract Performance Security'.

1.40. Successful operation means the materials installed shall be in service & performing satisfactorily as per Technical specification.

2. APPLICATION

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. STANDARDS

The goods and services provided under this Contract shall conform to the standards mentioned in the Technical Specifications and when no applicable standard is mentioned; to the authoritative standard appropriate to the goods / services and such standards shall be the latest issued by the concerned institution.

4. LANGUAGE AND MEASURES

All documents pertaining to the Contract including specifications, schedules, notices, correspondences, operating and maintenance instructions, drawings or any other writing shall be written in English language. The Metric System of measurement shall be used exclusively in the Contract.

5. CONTRACT DOCUMENTS

5.1. The term Contract Documents shall mean and include the following, which shall be deemed to form an integral part of the Contract:

a) Invitation for Bidders including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract and all other documents.

b) Specifications of the Equipment/ Material to be furnished and erected under the Contract as brought out in the accompanying Technical Specifications.

c) Contractor's Bid Proposal and the documents attached there to including the letters of clarifications thereto between the Contractor and BESCOM prior to the Award of Contract except to the extent of repugnancy.

d) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of BESCOM

e) Letter of Award and any agreed variations of the conditions of the documents, if any.

5.2. All Documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The contract shall be read as a whole.

5.3. In the event of any conflict between the above mentioned documents, the resolution shall be reached mutually by both the parties or through Mutual Arbitrator.

5.4. All the relevant Information/Material furnished by the Contractor such as Specifications of Material/Equipment, Design, Literature, Drawings or any other Data during the course of Contract will become the Property of BESCOM and BESCOM will have full rights to use the same elsewhere.

6. USE OF CONTRACT DOCUMENTS AND INFORMATION

6.1. The Contractor shall not, without BESCOM's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of BESCOM in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purpose of such performance.

6.2. The Contractor shall not, without BESCOM's prior written consent, make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract.

6.3. The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Works under this Contract, or descriptions of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from BESCOM.

6.4. Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of BESCOM and shall be returned (in all copies) to BESCOM on completion of the Contractor's performance under the Contract if so required by BESCOM.

7. INDEPENDENT CONTRACTOR

7.1. The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

7.2. Subject to provisions of the Contract, the Contractor shall be solely responsible for manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of BESCOM, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and BESCOM.

8. CONSTRUCTION OF THE CONTRACT

8.1. Notwithstanding anything stated elsewhere in the bid documents, the Contract to be entered into will be treated as a single contract for supply of works, services and materials as detailed in the scope of works.

8.2. The Contract shall in all respects be construed and governed according to Indian Laws.

9. AMENDMENT

No amendment or other variation of the contract shall be effective unless it is in writing, is dated, expressly refers to the contract, and is signed by a duly authorized representative of each party hereto.

10. JURISDICTION OF THE CONTRACT

The laws applicable to the Contract shall be the laws in force in India. The Courts of Bengaluru City of Karnataka State in India shall have exclusive jurisdiction in all matters arising under this Contract.

11. MANNER OF EXECUTION OF THE CONTRACT

11.1. BESCOM will issue Letter of Intent to the contractor.

11.2. BESCOM after the receipt of Letter of Acceptance from the Contractor, will send one copy of the final agreement.

11.3. The contract, unless otherwise agreed to, shall be signed within 15 days from issuance of Letter of Intent, at the office of BESCOM on a date and time to be mutually agreed. The Contractor shall provide Performance Guarantee, appropriate power of attorney and other requisite documents. In case the Contract is to be signed beyond the stipulated time, the Bid Guarantee submitted with the Proposal will have to be extended accordingly.

11.4. The Agreement shall be signed in duplicate and the Contractor shall be provided with one signed copy and BESCOM will retain the Original.

11.5. BESCOM will issue Detailed Work Award (DWA) after receipt of Contract agreement and Performance Bank Guarantee.

11.6. Subsequent to signing of the Contract and issuance of DWA, the Contractor at his own Cost shall provide BESCOM with at least 05 true Bounded Copies of Contract documents.

12. ENFORCEMENT OF TERMS

The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have under the Contract.

13. INSTALLATION AND COMMISSIONING

Design, Installation, commissioning, testing to be completed as per the scope of works defined in Technical specification within 18 months as defined in Implementation Plan from the date of DWA adhering to the timelines given.

14. DATA SECURITY

Employer's data consists of Critical data of Electricity Distribution System. The Contractor shall ensure security of employer's data that is transmitted over the network.

15. PERFORMANCE

15.1 For Remote Equipment:

15.1.1 Service availability during a quarter should not be less than 94%. Any equipment offline because of power supply issue at SPB end not to be included for calculation of service availability.

15.1.2 Contractor to put their best effort to maintain the availability of the communication link for remote operations with continuous coordination with service provider.

16. COMPLETION OF THE CONTRACT

Unless otherwise terminated under the provisions of any other relevant clause, the contract period from date of issue of DWA shall be 18 months within which the works are to be completed unless extended, and the liability for the materials/equipment supplied during the course of the contract shall be for the guarantee period as provided for under the clause B entitled 'Guarantees & Liabilities' in this section.

B. GUARANTEES & LIABILITIES

17. TIME – THE ESSENCE OF THE CONTRACT

17.1. The timelines for "**Providing Communication Solution and Technology for SCADA operations of SPB remote devices pertaining to South zone of BMAZ**" as detailed in the scope of the works and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his work as to complete the work in stipulated timelines.

17.2. The Contractor shall complete the work as detailed in the scope of work. However, consequent to delay in execution of works attributable to BESCOM, the Contractor shall not be held responsible for the same.

17.3. The Contractor shall submit a detailed PERT Chart, within the time frame agreed, consisting of adequate number of activities covering various key Phases of the Work such as Design, Procurement, Shipment, Receiving of BESCOM Supplied Equipment's (if any), Field Erection activities, testing, Link Establishment and Integration within thirty (30) days of the date of Award of Contract. This PERT Chart shall also indicate the Interface facilities to be provided by BESCOM and the dates by which such facilities are needed. The Contractor shall discuss the submitted PERT Chart with BESCOM and the agreed PERT Chart shall form part of the Contract Documents. During the Performance of the Contract, if in the opinion of General Manager(DAS), proper progress is not maintained; Suitable changes shall be made in the Contractor's Operations to ensure proper progress without any Cost implication to BESCOM. The Interface Facilities to be provided by BESCOM in accordance with the agreed PERT chart shall also be reviewed while reviewing the progress of the Contract. The PERT Chart shall be reviewed, updated, once every Month and submitted to General Manager(DAS) for approval.

17.4. Based on the above-agreed PERT Network Chart, fortnightly reports shall be submitted by the Contractor as directed by the General Manager(DAS).

17.5. Subsequent to the, finalization of the PERT Chart, the Contractor shall make available to the General Manager(DAS) a detailed Manufacturing Program, in line with the agreed Contract PERT Network. Such Manufacturing Program shall be reviewed, updated and submitted to the General Manager(DAS) once every two months thereafter.

17.6. The above PERT Charts/ Manufacturing Program shall be compatible with BESCOM's Computer environment and furnished to BESCOM on such Media as may be desired by BESCOM.

17.7. The successful bidder shall complete the survey of remote sites and shall provide a detailed plan to DAS section, BESCOM as per Implementation plan.

17.8. The successful bidder shall complete the work of providing Communication System network in phases as detailed in the scope of work within 18 months. List of sites will be given by Employer.

17.9. The reporting / verifying / approving authority may suggest changes in the proposed plans which shall be incorporated by the successful Bidder at no additional cost to BESCOM.

17.10. The Successful Bidder shall submit the Monthly progress reports within the 5th day of every month. Formats shall be as decided by General Manager(DAS).

18. WORK SCHEDULE AND COMPLETION PERIOD

18.1. Field Survey

The successful bidder shall conduct a field survey for checking network availability as detailed in the Technical specifications. The detailed survey report shall be submitted to BESCOM for approval within 01 months from the date of receipt of DWA.

18.2. The time schedule for **"Providing Communication Solution and Technology for SCADA operations of SPB remote devices pertaining to South zone of BMAZ"** is as detailed in Implementation Plan.

18.3. The Contractor shall execute the works as detailed in the scope of works. He shall provide the work plans as per Implementation plan for execution of works as detailed in scope of works for integration of automation points to be provided. Once approved the work plan shall be required to be adhered.

18.4. Any other items or materials of work not specifically mentioned in CSR 2021-22, but which are essentially required for satisfactory performance & completeness of these works shall be deemed to be included in the scope of works and the same shall be executed / carried out by the Contractor at mutually agreed rates on par with market rates.

18.5. The whole of the works together with any temporary works associated therewith shall be carried out satisfactorily by the Contractor and workmanship like manner with the materials and workmanship as specified to the entire satisfaction of the Engineer-in-charge, and in such a manner as the Engineer-in-charge may direct. The Contractor shall carryout without any delay all orders and instructions which the Engineer-in-charge may issue from time to time.

19. EFFECTIVENESS OF THE CONTRACT

The Contract shall be considered as having come into force from the date of issue of Letter of Intent. The Contract period shall be for a period 18 months from the date of issue of detailed work award.

20. COMPLETION TIME GUARANTEE

20.1. The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the bid documents) within the Time for Completion specified in the bid documents pursuant to GCC Clause 16.

20.2. If the Contractor fails to comply with the Time for Completion in accordance with GCC Clause 16 for the whole of the facilities, (or a part for which a separate time for completion is agreed if any) then the Contractor shall pay to BESCOM as liquidated damages for such default and not as a penalty, without prejudice to BESCOM's other remedies under the Contract, for each week or part thereof which shall elapse between the relevant Time for Completion and the User Acceptance date of the whole of the Works (or a part for which a separate time for completion is agreed) subject to the limit of ten percent (10%) of total Contract Price. BESCOM may, without prejudice to any other method of recovery, deduct the amount of such damages from any payment due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

20.3. No bonus will be given for earlier Completion of the Facilities or part thereof.

21. GUARANTEE

21.1. The Contractor shall guarantee that all Equipment supplied by him will be new, unused and in accordance with the Contract Documents and free from defects in Material and Workmanship for a period of 24 Months from the date of Link Establishment. No repairs or replacement shall normally be carried out by BESCOM, when the Equipment is under the supervision of the Contractor's Supervisory Engineer.

21.2. Any defects noticed and/or failures/breakdown occurred during this period shall be rectified at free of cost to BESCOM. The repaired or new parts shall be supplied and erected at free of cost by the Contractor. Irrespective of number of failures and repairs, the contractor shall be responsible for free replacement of the defective materials. If they are not rectified or replaced within this period, the contractor shall pay Liquidated Damages (prorate basis) as per Liquidated Damages clause in the contract for the delay from the date of receipt of intimation for the defects or failures.

21.3. If any repair is carried out on contractor's behalf at the site, the Contractor shall bear the cost of such repairs. The cost of any special work required or general overhaul rendered necessary during the contract period due to defects in the material or defective work carried out by the Contractor shall be borne by the Contractor.

21.4. The incidental expenses, transport and freight charges for the replacement of defective materials within the contract period may also be borne by the contractor till such time it serves its stipulated contract period.

21.5. The acceptance of the works by BESCOM shall in no way relieve the Contractor of his obligations under guarantee clause.

21.6. The contractor shall guarantee among other things, the following

a) Quality and strength of materials used.
b) Safe electrical and mechanical stresses on all parts of the equipment under all specified conditions.
c) Performance figures given by the contractor in the Schedule of Guaranteed technical particulars.

21.7. The provisions contained in this clause shall also be applicable in cases of normal wear and tear of the parts of the equipment supplied by the contractor.

22. TAXES, PERMITS & LICENCES

22.1. The bidders have to quote GST and any other applicable Taxes prevailing as on date of bid opening and the same shall be clearly spelt out in the offer. **If no mention is made then prices quoted will be evaluated as inclusive of all taxes.**

22.2. GST will be paid as indicated by the Bidder in the Price Bid.

22.3. If there is any concession/reduction in the GST by the changes in the policies by the Central/State Government, the same shall be availed and passed on to BESCOM.

22.4. Any such Taxes, Duties, Levies etc., or rates not considered by the Bidder but payable as applicable on the date of bidding shall be to Bidder's account and no separate claim on this behalf shall be entertained by BESCOM.

22.5. In case of deductions of statutory taxes, prevailing procedure will prevail.

22.6. As regards the Income Tax, Surcharge on Income Tax and any other Corporate Tax, BESCOM shall not bear any Tax liability whatsoever. The Bidder shall be liable and responsible for Payment of such Taxes as mandated under the provisions of the Law.

22.7. Before quoting, the Bidder shall ascertain from the concerned Tax Authorities of Government of Karnataka, the applicability of Work Contract Tax, Service Tax etc., in respect of this contract and include the same in the quoted Price. No separate Claim in this regard will be entertained by BESCOM, as it is the responsibility of the Bidder to pay all these Taxes.

22.8. If there is any enhancement in the statutory taxes like GST, due to change in policies by the Central/State Government then such enhanced taxes will be payable by BESCOM.

22.9. No claim for any increase towards statutory variation regarding enhancement of existing tax, GST or duty or introduction of a new tax or duty shall be entertained during the extended period of contract if the extension is required by causes attributable to the supplier.

23. REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS

23.1. If during the performance of the Contract, Engineer shall decide and inform in writing/or through mail to the Contractor that the Contractor has supplied any equipment inferior to the quality specified, the Contractor on receiving notice of such defects or deficiencies shall at his own expense within seven (7) days of his receiving the notice, or otherwise, within such time as may be reasonably necessary for making it good, furnish fresh equipment/materials up to the standards of the specifications as per BESCOM instructions. In case, the Contractor

fails to do so, the Engineer may proceed to replace the equipment/materials so complained at the cost of the Contractor. Payments will not be made against that equipment or will be deducted from the payments due to the contractor.

23.2. In the event of emergency where in the judgment of the Engineer, delay would cause serious loss or damages, repairs or adjustment may be made by the Engineer or a third party chosen by the Engineer without advance notice to the contractor and the cost of such work shall be paid by the contractor. In the event such action is taken by the Engineer, the Contractor will be notified promptly and he shall assist where possible in making necessary corrections. This shall not relieve the Contractor of his liabilities under the terms and conditions of the contract.

23.3. The Contractor's full and extreme liability under this clause shall be satisfied by the payment to BESCOM of extra cost, of such replacement procured including erection as provided for in the Contract, such extra cost being the ascertained difference between the price paid by BESCOM for such replacements and the Contract Price by portion for such defective equipment/materials/works and repayments of any sum paid by BESCOM to the Contractor in respect of such defective equipment/material. Should BESCOM not so replace the defective equipment/materials the Contractor's extreme liability under this clause shall be limited to repayment of all sums paid by BESCOM under the Contract for such defective equipment/materials.

24. DEFENCE OF SUITS

If any action in court is brought against BESCOM or Engineer or an officer or agent of BESCOM, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or for damage or injury caused by the alleged omission or negligence on the part of the Contractor, his agents, representatives or his Sub-Contractors, or in connection with any claim based on lawful demands of Sub-Contractors, workmen, suppliers or employees, the Contractor shall in all such cases indemnify and keep BESCOM, and the Engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such action.

25. LIMITATION OF LIABILITIES

25.1. Except in cases of gross negligence or willful misconduct,

a) The contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

b) The aggregate liability of the contractor to the Employer whether under the contract, in tort or otherwise, shall not exceed twenty (20%) of total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Employer with respect to patent infringement.

26. ADVANCE PAYMENT

26.1. The Employer shall make payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an unconditional bank guarantee in a form acceptable to the Employer issued by a Nationalized Banks of India/Scheduled Commercial Bank (Public Sector/Private Sector) in amounts equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

26.2. The Contractor is to use the advance payment only to pay for Mobilization expenses required specifically for execution of the Works. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Employer.

26.3. The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuation of the work done, variations, price adjustments, compensation events or liquidated damages.

27. PERFORMANCE GUARANTEE

The final payment by the Owner by releasing the Contract Performance Guarantee in pursuance of the Contract shall mean the release of the Contractor from all his liabilities under the Contract. Such final payment shall be made only at the end of the successful completion of the delivery of services OR till such time the Contractual liabilities and responsibilities of the Contractor are complied. All other payments made under the Contract shall be treated as on-account payments.

28. ENGINEER'S DECISION

28.1. In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

28.2. If, in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer, within seven (7) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.

28.3. The Engineer's decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the Agreement that there shall be no delay in the execution of the works and the decision of the Engineer as rendered shall be promptly observed.

29. POWER TO VARY OR OMIT WORK

29.1. No alterations, amendments, omissions, suspensions or variations of the Works (hereinafter referred to as 'variation') under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer, but the Engineer shall have full powers subject to the provisions hereinafter contained, from time to time during the execution of the Contract, by notice in writing to instruct the Contractor to make such variation without prejudice to the Contract. The Contractor shall carry out such variation and be bound by the same conditions as far as applicable as though the said variations occurred in the Contract Documents. If any suggested variations would, in the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the Contract, he shall notify the Engineer thereof in writing and the Engineer shall decide forthwith whether or not, the same shall be carried out and if the Engineer in charge confirms his instructions, the Contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed. Any agreed difference in cost occasioned by any such variation shall be added to or deducted from the Contract Price as the case may be.

29.2. In the event of Engineer requiring any variation, a reasonable and proper notice shall be given to the Contractor to enable him to work his arrangement accordingly, and in cases where goods or materials are already prepared or any design, drawings or pattern made or work done requires to be altered, a reasonable and agreed sum in respect thereof shall be paid to the Contractor.

29.3. In any case in which the Contractor has received instructions from the Engineer as to the requirement of carrying out the alterations or additional or substituted work which either then or later on, will in the opinion of the Contractor, involve a claim for additional payment, the Contractor shall immediately and in no case later than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advise the Engineer to that effect. But the Engineer shall not become liable for payment of any charges in respect of any such variations, unless the instructions for the performance of the same shall be confirmed in writing by the Engineer.

29.4. If any variation in the Works results in reduction of Contract Price, the parties shall agree, in writing, so to the extent of any change in the price, before the Contractor proceeds with the change.

29.5. In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the Engineer in charge shall prevail.

29.6. Notwithstanding anything stated above in this clause, the Engineer shall have the full power to instruct the Contractor, in writing, during the execution of the Contract to vary the quantities of the items or groups of items in accordance with the provisions of clause entitled 'Change of Quantity' in section GCC. The Contractor shall carry out such variations and be bound by the same conditions as though the said variations occurred in the Contract Documents. However, the Contract Price shall be adjusted at the rates and the prices provided for the original quantities in the Contract.

30. ASSIGNMENT OF CONTRACT

For components/equipment procured by the Contractor for the purposes of the Contract, after obtaining the written approval of BESCOM, the Contractor's purchase specifications and enquiries shall call for quality plan to be submitted by the suppliers along with their Proposals. The quality plans called for from the Vendors shall set out, during the various stages of manufacture and installation, the quality practices and procedures followed by the Vendors quality control organization, the relevant reference document/standard used, acceptance level, inspection documentation raised, etc. Such quality plans of the successful vendors shall be discussed and finalized in consultation with the Engineer and shall form a part of the Purchase Order/Contract between the Contractor and the Vendor. Within three weeks of the release of the Purchase Orders/Contracts for such bought out items/components a copy of the same without price details but together with detailed purchase specifications, quality plans and delivery conditions shall be furnished to the Engineer by the Contractor.

31. CHANGE OF QUANTITY

31.1. During the execution of the Contract, BESCOM reserves the right to increase or decrease the quantities of items under the Contract but without any change in unit price or other terms & conditions subject to the specific provision for the individual items but the total variations in all such items under the Contract shall be limited to a percentage of the Contract price as specified in the clause 31.3 of GCC.

31.2. The Contract price shall accordingly be adjusted based on the unit rates available in the Contract for the change in quantities as above. The base unit rates, as identified in the Contract shall however remain constant during the currency of the Contract, except as provided for in Clause Price adjustment. In case the unit rates are not available for the change in quantity, the same shall be subjected to mutual agreement.

31.3. The quantity of all equipment/materials given in the Bill of Materials is provisional. The total variations in all such items under the contract shall be limited to twenty-five percent (25% + or -) of the contract price. The amount put to tender is provisional it may vary and the Contractor shall be responsible for supply and execution of such final quantities for completion of works and they shall be paid for such finalized quantity at the unit rate indicated in the Letter of Award during the contract period.

32. CHANGE ORDER

32.1. BESCOM may at any time, by written order given to the Contractor pursuant to GCC Clause 60, make changes within the general scope of the Contract in any one or more of the following:

(a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;

(b) the method of shipping or packing;

(c) the place of delivery; and/or

(d) the Services to be provided by the Contractor.

32.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of the Contractor's receipt of the BESCOM's change order.

33. PACKING, FORWARDING AND SHIPMENT

33.1. The Contractor, wherever applicable, shall after proper painting, pack and crate all equipment in such a manner as to protect them from deterioration and damage during rail and road transportation to the Site and storage at the Site till the time of erection. The Contractor shall be held responsible for all damages due to improper packing.

33.2. The Contractor shall notify BESCOM of the date of each shipment from his works, and the expected date of arrival at the Site for the information of BESCOM.

33.3. The Contractor shall also give all shipping information concerning the weight, size and content of each packing including any other information BESCOM may require.

33.4. The following documents shall be sent by registered post to BESCOM within three days from the date of shipment, to enable BESCOM to make progressive payments to the Contractor.

33.5. The Contractor shall prepare detailed packing list of all packages and containers, bundles and loose materials forming each and every consignment dispatched to Site.

33.6. The Contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling right from his works up to the Site and also till the equipment is erected, tested and commissioned. He shall be solely responsible for proper storage and safe custody of all equipment.

34. COOPERATION WITH OTHER CONTRACTORS AND CONSULTING ENGINEERS

The Contractor shall agree to cooperate with BESCOM other Contractors and Consulting Engineers and freely exchange with them such technical information as is necessary and to avoid unnecessary duplication of efforts.

35. NO WAIVER OF RIGHTS

Neither the inspection by BESCOM or the Engineer or any of their officials, employees, or agents nor any order by BESCOM or the Engineer for payment of money or any payment for or acceptance of, the whole or any part of the Works by BESCOM or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract, or of any power herein reserved to BESCOM or any right to damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

36. CERTIFICATE NOT TO AFFECT RIGHT OF BESCOM AND LIABILITY OF THE CONTRACTOR

No interim payment certificate of the Engineer, nor any sum paid on account by BESCOM, nor any extension of time for execution of the Works granted by the Engineer shall affect or prejudice the rights of BESCOM against the Contractor or relieve the Contractor of his obligation for the due performance of the Contract, or be interpreted as approval of the Works done or of the equipment furnished and no certificate shall create liability for BESCOM to pay for alterations, amendments, variations or additional works not ordered, in writing, by the Engineer or discharge the liability of the Contractor for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which he is bound to indemnify BESCOM, nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of BESCOM against the Contractor.

37. TRAINING OF BESCOM'S PERSONNEL

37.1. The Contractor shall undertake to train free of cost, engineering personnel selected and sent by BESCOM, at the works of the Contractor.

37.2. The period and the nature of training for the individual personnel shall be agreed upon mutually between the Contractor BESCOM. These Engineering personnel shall be given training on installation, operation, or testing to enable those personnel to become familiar with the equipment being furnished by the Contractor. The details of the number of persons to be trained, period of training, nature of training etc. shall be as outlined in accompanying Technical Specifications.

38. PROGRESS REPORTS AND PHOTOGRAPHS

During the various stages of the work in pursuance of the Contract, the Contractor shall at his own cost submit periodic progress reports as may be reasonably required by the Engineer and detailed in the scope of works with photographs etc. or as may be required by the Engineer.

39. COMPLETION OF THE FACILITIES

39.1. Completion of the Facilities

39.1.1. Physical Completion

As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify BESCOM in writing.

39.1.2. Commissioning

39.1.2.1. Commissioning of the facilities or any part thereof shall be commenced by the contractor immediately after being advised by BESCOM pursuant to GCC sub clause 39.1.1. Commissioning of the Facilities or any part thereof shall be completed by the Contractor as per procedures detailed in Technical Specifications.

39.1.2.2. BESCOM shall, to the extend specified in Scope of work of the Contract Agreement, deploy the

operating and maintenance personnel and supply all materials required for commissioning.

39.1.2.3. In the event that the Contractor is unable to proceed with the Commissioning of the Facilities pursuant to Sub-Clause 39.1.2 for reasons attributable to BESCOM either on account of non-availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond BESCOM's control, Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause.

39.1.2.4. As and when, after the period of suspension under GCC Sub Clause 39.1.2.3, the Contractor is notified by the GM (DAS) that the Facilities are ready for Commissioning; the Contractor shall proceed without delay in performing all activities & obligations under the Contract.

39.1.3. Availability Test

i. Availability Test of the Facilities or any part thereof shall be commenced by Contractor immediately after Commissioning is completed pursuant to GCC Sub-Clause 39.1.2.1.

ii. Availability Test of the Facilities or any part thereof shall be completed by Contractor for period specified in Technical Specification and as per procedures detailed in Technical Specifications. During Availability Test, the Service Level Agreement detailed has to be complied.

40. FUNCTIONAL GUARANTEES

40.1. The Contractor guarantees that the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Technical Requirements, subject to and upon conditions therein specified.

40.2. If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Technical Requirements are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify BESCOM upon completion of the necessary changes, modifications and / or additions, and shall request BESCOM to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, BESCOM may consider termination of the Contract pursuant to GCC Clause Termination of Contract on BESCOM initiative and recover the payments already made to the Contractor.

40.3. If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Technical Specifications are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the Technical Specifications is met, the Contractor shall, at the Contractor's option, either

a. Make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the

Functional Guarantees at its cost and expense within a mutually agreed time and shall request BESCOM to repeat the Guarantee Test.

Or

b. Pay liquidated damages to BESCOM in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the bid documents.

In case BESCOM exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause Contractor Default and liquidated damages, upto the limitation of liability specified in the bid documents, shall completely satisfy the Contractor's guarantees under GCC Clause 20, and the Contractor shall have no further liability whatsoever to BESCOM in respect thereof. Upon the payment of such liquidated damages by the Contractor, BESCOM shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which liquidated damages have been so paid.

41. OPERATIONAL ACCEPTANCES

41.1. Operational Acceptance shall occur in respect of the Facilities or any part thereof as mentioned below:

a. In case no Functional Guarantees are applicable, Operational Acceptance shall occur when the Facilities or part thereof have been successfully Commissioned and Availability Test for the specified period have been successfully completed.
Or

b. In case Functional Guarantees are applicable; Operational Acceptance shall occur when the Functional Guarantees are met or the Contractor has paid liquidated damages specified in GCC Sub-Clause 55 hereof.

41.2. At any time after successful completion of all the tests to be performed at the site on the equipment furnished, erection and commissioning of all the remote sites in each phase, Testing, Integration and Completion of Training, the Contractor may give a notice to the General Manager(DAS) requesting the issue of an Operational Acceptance Certificate in the form provided in the Bidding Documents or in another form acceptable to BESCOM in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

41.3. BESCOM shall issue an Operational Acceptance Certificate as a proof of the acceptance of the Plant and Equipment. Such certificate shall not relieve the Contractor of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.

41.4. The Operational acceptance shall be given as detailed in Implementation plan.

C. CONTRACT SECURITY AND PAYMENTS

42. CONTRACT PERFORMANCE SECURITY/GUARANTEE

42.1. The Contractor shall furnish Contract Performance Guarantee(s) for the proper fulfilment of the Contract in the prescribed form within Fifteen (15) days from issuance of Letter of Intent. The performance guarantee(s) shall be as per terms prescribed in Section–II of Instructions to Bidders.

42.2. The Performance Bank Guarantee shall be equal to 5% of the Contract Price. The Guarantee shall be valid till expiry of 90 (Ninety) days after the completion of the warranty period. In case of any changes in Security Deposit as per Government orders, Bidder has to adhere to government orders.

42.3. The PBG shall be furnished in format prescribed by BESCOM. In case of furnishing Bank Guarantee, the same must be sent to us directly by the Banker. In the event of the supplier failing to deposit such security within the prescribed date BESCOM shall have full discretion to cancel the LOI and black list the firm at the discretionary of BESCOM.

42.4. All charges what so ever such as premium, commission etc., with respect to the Performance Bank Guarantee shall be borne by the bidder.

42.5. The Performance Bank Guarantee shall be discharged/returned by BESCOM upon being satisfied that there has been no due in performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the Performance Bank Guarantee (PBG).

42.6. In the event of the bidder being unable to service the contract for whatever reason, BESCOM shall have the right to invoke the PBG. BESCOM shall notify the Bidder in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Bidder is in default.

42.7. BESCOM shall also be entitled to make recoveries from the Bidder bills, PBG or any other payment due, in case of any error/omission on bidder's part.

43. PROCEDURE AGAINST SUPPLY OF MATERIALS

43.1. The contractor shall be required to raise a call letter to General Manager, DAS as soon as materials are ready to arrange for inspection of materials so that the same are dispatched on approval.

43.2. The contractor shall supply these materials and store the materials at his site. BESCOM Engineer shall verify and certify the supply and availability of materials supplied for the works.

43.3. The contractor shall hence arrange and supply the materials required.

44. PROCEDURE AGAINST DELIVERY OF SOFTWARE SOLUTION

44.1. The Contractor shall submit a detailed schedule for integration of remote points with Network Management Tool provided by North Zone Contractor in co-ordination with North Zone Contractor.

44.2. The Contractor shall integrate with real-time network management tool in-line with the approved schedules, design and Technical Specification in co-ordination with North Zone Contractor.

45. INSPECTION AND TESTS

45.1. The General Manager (DAS)/designated officer from BESCOM shall have the right to inspect and/or to Test the Goods to confirm their conformity to the Contract. The General Manager (DAS) shall notify the Supplier/Contractor in writing on the identity of any Representatives authorized for these purposes.

45.2. The Inspection and Tests may be conducted on premises of the Supplier/Contractor at point of delivery and/or at the Goods final destination. When conducted on the premises of the Supplier/ Contractor, all reasonable facilities and assistance including access to Drawings and Production Data shall be furnished to the Inspectors at no charge to BESCOM, by the contractor including facilitating travel documents.

45.3. Should any inspected or Tested Goods fail to conform to the Specifications, BESCOM may reject them and the Supplier / Contractor shall either replace the rejected Goods or make all alterations necessary to meet Specification requirements at free of Cost to BESCOM. Should the Contractor fail to Offer Materials/ Equipment for inspection on the specified date or the Materials fails during the Test, all the expenses incurred by, BESCOM for subsequent inspections should be borne by the Contractor.

45.3.1. The re-inspection charges when BESCOM Officers are deputed for 2nd time for inspection of materials/equipment which were not ready for inspection on first visit or materials rejected on first time shall be borne by Contractor.

45.3.2. BESCOM's right to inspect, Test and, where necessary, reject the Goods after the arrival of the Goods shall in no way be limited or waived by reason of the Goods having previously been inspected, Tested and passed by BESCOM or his Representative prior to the Goods transportation.

45.4. Nothing in Clause 45.1 to 45.3 shall, in any way, release the Supplier / Contractor from any Warranty or other obligations under this Contract.

46. TERMS OF PAYMENT

46.1. The Contract Price shall be paid as specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.

46.2. No payment made by BESCOM herein shall be deemed to constitute acceptance by BESCOM of the Facilities or any part(s) thereof.

46.3. All payments shall be made in the currency or currencies specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, pursuant to GCC 46.1.

47. PENALTY FOR DELAY IN EXECUTION/NON-EXECUTION OF THE WORK.

47.1. For delay in taking up the works as planned and not completing the installation of communication facility at remote sites, a penalty @ ½% per week will be levied against the works of that are delayed, subject to

maximum of TEN percentage (10%) of cost on the portion of work which is not completed.

47.2. The period of continuance of delay beyond 30 weeks shall be at the discretion of the Engineer. If the Contractor still fails to complete the work within such extended period, the Contract shall be cancelled at Employer discretion.

47.3. During the warranty period, if the contractor fails to provide replacement or service as defined in SLA, 10% of PBG cost on the portion of work which is not carried out will be deducted by BESCOM.

47.4. In a nut shell, Penalties levied for the following:

I. Non-fulfilment of program of works within the stipulated period.

II. The number of days delayed beyond the stipulated period for completing the work.

III. Extra cost that might be incurred by BESCOM for getting the balance work completed through any other agency as it deems fit under the circumstances will be deducted from money due to him by BESCOM for work done under the Contract or otherwise.

IV. Non Availability of Contractor Personnel during the execution of contract.

V. The total amount of Penalty for delay under the contract shall be subject to a maximum of ten percent (10%) of the contract price and BESCOM has got every right to terminate the contract without any liability if it crosses 10%.

48. DEDUCTIONS FROM CONTRACT PRICE

All costs, damages or expenses which BESCOM may have paid, for which under the Contract the Contractor is liable, will be claimed by BESCOM. All such claims shall be billed by BESCOM to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor to properly identify such claims. Such claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, BESCOM may then deduct the amount, from any money due or becoming due by him to the Contractor under the Contract or may be recovered by sections of Law or otherwise.

D. RISK DISTRIBUTION

49. TRANSFER OF TITLE

49.1. Transfer of title in respect of equipment and materials supplied by the Contractor to BESCOM pursuant to the terms of the Contract shall pass on to BESCOM with negotiation of dispatch documents.

49.2. This Transfer of Title shall not be construed to mean the acceptance and the consequent “Taking Over” of equipment and materials. The Contractor shall continue to be responsible for the quality and performance of such equipment and materials and for their compliance with the specifications until “Taking Over” and the fulfilment of guarantee provisions of this Contract

49.3. This Transfer of Title shall not relieve the Contractor from the responsibility for all risks of loss or damage to the equipment and materials as specified under the clause entitled “Insurance” of this Section.

49.4. In case, if any part of the entity which is involved in the contract is sold out/dissolution of Partnership during execution of contract, which affects the successful completion of project, BESCOM will levy additional 10% of Contract Value as Performance Security Deposit. Additional Security deposit will be returned back after successful completion of the contract.

50. INSURANCE

The Goods supplied under the Contract shall be fully insured in Indian Rupees against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery. For delivery of goods at site, the insurance shall be obtained by the Supplier in an amount equal to 110% of the value of the goods from "warehouse to warehouse" (final destinations) on "All Risks" basis including War risks and Strikes.

51. LIABILITY FOR ACCIDENTS AND DAMAGES

Under the Contract, the Contractor shall be responsible for loss or accidents which might arise owing to non – observation of safety requirements or else wise by its staff during execution of works. Also the contractor shall be responsible for loss or damage to the plant until successful Link Establishment as defined in Technical Specification.

52. DEMURRAGE, WHARFAGE, ETC.

All demurrage, wharfage, and other expenses incurred due to delayed clearance of the Material or any other reason shall be to the account of the Contractor.

53. FIRST AID

To deal with emergency/accidental eventualities at works site, the Contractor shall make all such arrangements necessary, such as services of an ambulance etc. for transportation to hospital at his own cost.

54. FORCE MAJEURE

54.1. Force majeure is herein defined as any cause which is beyond the control of the Contractor or BESCOM as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract, such as:

a. Natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;
b. Acts of any Government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, guarantees and embargoes.

Provided either party shall within fifteen (15) days from the occurrence of such a cause notify the other in writing of such causes.

54.2. The Contractor or BESCOM shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above.

54.3. The date of completion will, subject to hereinafter provided, be extended by a reasonable time even though such cause may occur after

Contractor's performance of obligation has been delayed due to other causes.

55. CONTRACTOR'S DEFAULT/LIQUIDATED DAMAGES

55.1. If the Contractor shall neglect to execute the works with due diligence and expedition or shall refuse or neglect to comply with any reasonable order given to him, in writing by the Engineer in connection with the works or shall contravene the provisions of the Contract, BESCOM may give notice in writing to the Contractor to make good the failure, neglect or contravention complained of. Should the Contractor fail to comply with the notice within thirty (30) days from the date of serving the notice, then and in such case BESCOM shall be at liberty to employ other workmen and forthwith execute such part of the works as the Contractor may have neglected to do or if BESCOM shall think fit, without prejudice to any other right he may have under the Contract to take the work wholly or in part out of the Contractor's hands and re-contract with any other person or persons to complete the works or any part thereof. BESCOM shall be entitled to retain and apply any balance which may otherwise be due on the Contract by him to the Contractor, or such part thereof as may be necessary, to the payment of the cost of executing the said part of the Works or of completing the Works as the case may be. If the cost of completing of works or executing part thereof as aforesaid shall exceed the balance due to the Contractor, then the Contractor shall pay such excess.

55.2. BESCOM may accept the Completed works assessing the Liquidated damages for shortcomings in works against the Contractor as per provisions of the Technical Specifications and such assessed amounts shall be deducted from the Contract price or otherwise recovered. Liquidated damages will be levied against non-completion of works in works as defined in the clause 2 of IFB Scope of Work subject to maximum of 10% of total Contract Price.

55.3. Such action by BESCOM as aforesaid the termination of the Contract under this clause shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value and for the full period of the Contract including guarantee period.

56. TERMINATION OF CONTRACT ON BESCOM'S INITIATIVE

56.1. BESCOM reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under clause entitled 'Contractor's Default'. BESCOM shall in such an event give fifteen (15) days" notice in writing to the Contractor of his decision to do so.

56.2. The Contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and Contracts to the extent they are related to the work terminated and terms satisfactory to BESCOM or purchasing activity related to the work terminated.

56.3. In the event of such a termination the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

56.4. If the Contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the Contractor is a partnership concern and one of the partners dies then unless BESCOM is satisfied that the legal representatives of the individual Contractor or of the proprietor of the propriety concern and in the case of partnership, the surviving partners, are capable of carrying out and completing the Contract BESCOM shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to payment of any compensation to the estate of deceased Contractor and/or to the surviving partners of the Contractor's firm on account of the cancellation of the Contract. The decision of BESCOM that the legal representatives of the deceased Contractor or surviving partners of the Contractor's firm cannot carry out and complete the Contract shall be final and binding on the parties. In the event of such cancellation, BESCOM shall not hold the estate of the deceased.

57. FRUSTRATION OF CONTRACT

57.1. In the event of frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, parties shall be absolved of their responsibility to perform the balance portion of the Contract.

57.2. In the event of non-availability or suspension of funds for any reasons, whatsoever (except for reason of wilful or flagrant breach by BESCOM and/or Contractor) then the works under the Contract shall be suspended.

57.3. Furthermore, if BESCOM is unable to make satisfactory alternative arrangements for financing to the Contractor in accordance with the terms of the Contract within three months of the event, the parties hereto shall be relieved from carrying out further obligations under the Contract treating it as frustration of the Contract.

58. GRAFTS AND COMMISSIONS ETC.

Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner(s), agent(s), officer(s), director(s), employee(s) or servant(s) or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with BESCOM, shall in addition to any criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to payment of any loss or damage to BESCOM resulting from any cancellation. BESCOM shall then be entitled to deduct the amount so payable from any money otherwise due to Contractor under the Contract.

59. RECONCILIATION OF ACCOUNTS

The Contractor shall prepare and submit every three (3) months, a statement covering payments claimed and the payments received vis-à-vis the works executed, for reconciliation of accounts with BESCOM.

60. NOTICES

60.1. Any Notice given by one Party to the other, pursuant to Contract, shall be sent in writing by Registered Post/Speed Post with Acknowledgement Due or Fax. Fax Notice shall be confirmed in writing to the address specified in the Contract.

60.2. Notice(s) shall be deemed to have been duly and properly served upon the Parties hereto, if sent by any of the above-mentioned methods to the address mentioned in the Contract.

60.3. A Notice shall be effective when issued by one of the above-mentioned means or on the Notice's effective date, whichever is later.

E. RESOLUTION OF DISPUTES

61. BANKRUPTCY

If the Contractor shall become bankrupt or otherwise insolvent or have a receiving order made against or compound with other creditors, or being a Corporation, commence to be wind up, not being a voluntary winding up for the purpose only of amalgamation/reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, BESCOM will be at liberty to terminate the contract forthwith by notice in writing to the contractor may become vested and BESCOM reserves the right to forfeit the performance security.

62. COMPLIANCE WITH LAWS AND REGULATIONS

The laws and regulations which are applicable to the Contractor and under which the Contract is to be constructed shall be Indian Laws and Regulations. The other terms and conditions regarding compliance with laws and regulations are as below:

The Contractor shall, in all matters arising in the performance of the Contract, comply with all respects, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or by-law of any duly constituted authority.

All liabilities arising out of the non-compliance of the Law of the Land by Contractor or its personnel will have to be borne by the Contractor, and BESCOM will not be responsible in any manner whatsoever for the same.

The Contract shall in all respect be construed and interpreted in accordance with the Laws in force in India, including any such Laws passed or made or coming into force during the period of the contract.

63. SEVERABILITY

Should any provision(s) of this Contract Order be held invalid or unenforceable in any respect that provision shall not affect any other provisions and this Contract Order shall be construed as if the invalid or unenforceable provision had not been included.

64. ENTIRE CONTRACT AGREEMENT

No modification, alteration or waiver of this contract order or any of its provisions shall be effective unless in writing and signed by both the parties.

65. LAWS, JURISDICTION, DISPUTES RESOLUTION AND ARBITRATION

65.1. A Party claiming that a Dispute has arisen under this Order must give the other Party a written notice of the particulars of the Dispute.

65.2. Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

65.3. If the party fails to resolve such a dispute or difference by mutual consultation within thirty (30) days from the commencement of such

dispute and difference, either party may require that the dispute be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) and subsequent Amendments made thereon, to be adjudicated by a sole arbitrator to be appointed by mutual agreement of both the parties and the award of the arbitrator shall be final and conclusive and binding upon both the Parties. (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed).

65.4. The place of arbitration shall be in Bangalore. The arbitral procedure shall be conducted in English language.

65.5. The cost of arbitration including the fees of arbitrator shall be borne by both the parties equally.

65.6. During the settlement of disputes and Arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

65.7. The award of the arbitrator shall be final and conclusive and binding upon the parties.

65.8. The courts of Bangalore only shall have the exclusive jurisdiction to deal with any issues arising out of this Contract.

Sd/-
General Manager,
DAS, BESCOM